

48A C.J.S. Judges § 252

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(2) Nature or Character

(b) Origin of Bias or Prejudice and Against Whom Directed

§ 252. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1)

Generally, bias and prejudice sufficient to disqualify a judge must be personal and extrajudicial in origin although judicial bias can also stem from the facts adduced or events occurring at trial.

Generally, bias or prejudice which will disqualify a judge is a personal one for or against a party to the cause,¹ which must stem from an extrajudicial source² and result in an opinion on the merits on some basis other than what the judge learned from participating in the case.³ A judge is not disqualified merely because the judge believes in upholding the law even though the judge says so with vehemence.⁴ A judge may not be disqualified for judicial bias,⁵ and facts learned by the judge in a judicial capacity cannot be the basis for disqualification.⁶ So, bias or prejudice acquired in the course of pending proceedings, such as one based on actual observance of witnesses and on the evidence given during the trial, is not bias or prejudice which disqualifies a judge from acting in such proceedings.⁷

However, judicial bias or prejudice can also stem from the facts adduced or the events occurring at trial.⁸ Bias and prejudice, although acquired in the course of judicial proceedings before the judge, may disqualify a judge from hearing other cases involving the same parties.⁹ Nevertheless, opinions formed by the judge on the basis of facts introduced or events occurring in

the course of the proceedings do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.¹⁰

An impersonal prejudice resulting from a judge's background, associations, or experience,¹¹ or a judge's prejudice against the cause or defense of a party¹² or against a particular type of litigation,¹³ ordinarily is not enough to require disqualification.

Extrajudicial source factor.

The extrajudicial source factor involves something other than rulings, opinions formed, or statements made by the judge during the course of trial.¹⁴ The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a necessary condition for bias or prejudice recusal since predispositions developed during the course of the trial will sometimes suffice.¹⁵ Further, it is not a sufficient condition for bias or prejudice recusal since some opinions acquired outside the context of judicial proceedings will not suffice.¹⁶ Since neither the presence of an extrajudicial source necessarily establishes bias nor the absence of an extrajudicial source necessarily precludes bias, it would be better to speak of the existence of a significant extrajudicial source factor, than an extrajudicial source doctrine, in recusal jurisprudence.¹⁷

Judicial gender bias.

Judicial gender bias includes behavior or decision making based upon stereotypical attitudes about the nature and roles of women and men, cultural perceptions of their relative worth, and myths and misconceptions about social and economic reality encountered by both sexes.¹⁸ Judicial gender bias is most likely to arise in litigation in which gender is material, such as sexual harassment and discrimination cases.¹⁹

Bias against witnesses.

A judge's bias or prejudice against witnesses is a proper ground for the judge's disqualification.²⁰

CUMULATIVE SUPPLEMENT

Cases:

Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. [Williams v. Pennsylvania](#), 136 S. Ct. 1899 (2016).

Trial judge was not presiding over case in which he was a victim, as would give rise to significant risk that judge would resolve case on basis other than its merits, warranting judge's recusal in criminal case against defendant charged with filing false lien and encumbrance against federal judges, although court in civil action ordered expungement of any liens that defendant had filed against judge, where defendant had not filed any liens against judge. 18 U.S.C.A. § 1521; 28 U.S.C.A. § 455(a). [United States v. Swallers](#), 897 F.3d 875 (7th Cir. 2018).

Fact that sentencing judge discounted opinion of psychiatric expert for defendant convicted of possession and transportation of electronic child pornography that defendant was a pedophile did not mandate recusal for bias, since expert's own testimony, and not any personal knowledge of disputed evidentiary facts allegedly held by the judge, provided the reasons to reject the diagnosis. 28 U.S.C.A. § 455(b)(1). [U.S. v. Modjewski](#), 783 F.3d 645 (7th Cir. 2015).

Affidavit alleging personal bias sufficient for recusal of a judge must declare that such bias emanates from some source other than participation in proceedings or prior contact with related cases; consequently, affidavits that are based exclusively on judge's prior orders and oral statements are insufficient to warrant recusal. 28 U.S.C.A. §§ 144, 455(b). *United States v. Scherer*, 532 F. Supp. 3d 479 (S.D. Ohio 2021).

An adverse ruling, on its own, is insufficient evidence of judicial bias. *Plasse v. Reid*, 529 P.3d 718 (Idaho 2023).

Single justice's previous dismissal of indictment against co-defendant of defendant did not warrant recusal of justice in subsequent proceeding on defendant's motion for leave to appeal following denial of motion for a new trial that followed murder conviction, where justice made neither credibility determinations nor factual findings in dismissing indictment against co-defendant, rather, dismissal was based on legal ruling that Commonwealth was estopped from denying co-defendant's duress claim, motion for leave to appeal did not require review of previous dismissal, and dismissal occurred over 20 years before motion for leave to appeal. *Com. v. Rivera*, 39 N.E.3d 732 (Mass. 2015).

Trial judge's stated rationale for imposing a longer sentence upon defendant than codefendant, in recognition of defendant's intelligence and culpability, did not evince judicial bias of sort that should have disqualified judge from the case, in prosecution for burglary of a habitation; contrary to defendant's assertion, trial court was not taking judicial notice of prior testimony from a separate case to resolve disputed facts in the case before it, but simply comparing the culpability of the two codefendants based upon his observations of the evidence presented in both trials. *Vickers v. State*, 467 S.W.3d 90 (Tex. App. Texarkana 2015), petition for discretionary review filed, (July 27, 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ind.—*Bahm v. State*, 789 N.E.2d 50 (Ind. Ct. App. 2003), decision clarified on reh'g, 794 N.E.2d 444 (Ind. Ct. App. 2003).

Wyo.—*Brown v. State*, 816 P.2d 818 (Wyo. 1991).
- 2 U.S.—*U.S. v. Grinnell Corp.*, 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966); *In re Owens Corning*, 305 B.R. 175 (D. Del. 2004).

Iowa—*State v. Millsap*, 704 N.W.2d 426 (Iowa 2005).

Mo.—*Worthington v. State*, 166 S.W.3d 566 (Mo. 2005).
- 3 U.S.—*U.S. v. Grinnell Corp.*, 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966); *U.S. v. Ciavarella*, 716 F.3d 705 (3d Cir. 2013), petition for cert. filed (U.S. Oct. 22, 2013).

Conn.—*State v. Ortiz*, 83 Conn. App. 142, 848 A.2d 1246 (2004).

Mo.—*Worthington v. State*, 166 S.W.3d 566 (Mo. 2005).

Reason for rule

The basic rationale of the rule that bias and prejudice of a judge is disqualifying only if it stems from an extrajudicial source lies in the distinction between opinions or biases developed by a judge during the course of court proceedings and personal opinions or biases that have their origins in sources outside the courtroom; the former are generally regarded as inevitable and, in fact, as essential to judicial decision making while

the latter sort of prejudices, although also inevitable, are potentially dangerous and disruptive of objectivity and impartiality.

U.S.—U.S. v. Conforte, 457 F. Supp. 641 (D. Nev. 1978), judgment *aff'd*, 624 F.2d 869 (9th Cir. 1980).

4 Nev.—Whitehead v. Nevada Com'n on Judicial Discipline, 110 Nev. 380, 873 P.2d 946 (1994).

5 U.S.—U.S. v. Archbold-Newball, 554 F.2d 665, 2 Fed. R. Evid. Serv. 320 (5th Cir. 1977); U.S. v. Sinclair, 424 F. Supp. 715 (D. Del. 1976).

Ala.—Ex parte White, 53 Ala. App. 377, 300 So. 2d 420 (Crim. App. 1974).

6 U.S.—Brown v. Oil States Skagit Smatco, 664 F.3d 71 (5th Cir. 2011).

Facts learned in off-the-record conferences with parties

U.S.—In re Owens Corning, 305 B.R. 175 (D. Del. 2004).

7 U.S.—U.S. v. Grinnell Corp., 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966); Andrade v. Chojnacki, 338 F.3d 448 (5th Cir. 2003).

D.C.—Foster v. U.S., 618 A.2d 191 (D.C. 1992).

8 Ill.—Eychaner v. Gross, 202 Ill. 2d 228, 269 Ill. Dec. 80, 779 N.E.2d 1115, 172 Ed. Law Rep. 363 (2002).

9 Fla.—Deauville Realty Co. v. Tobin, 120 So. 2d 198 (Fla. 3d DCA 1960).

10 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

11 U.S.—Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n, 872 F. Supp. 1346, 97 Ed. Law Rep. 263 (E.D. Pa. 1994), *aff'd*, 107 F.3d 1026, 116 Ed. Law Rep. 565 (3d Cir. 1997).

Mo.—State v. Hunter, 840 S.W.2d 850 (Mo. 1992).

Political activist

The fact that a woman judge had spent much of her legal career working on behalf of blacks who had suffered from race discrimination before her elevation to the bench did not suggest a personal bias in a civil rights case.

U.S.—Blank v. Sullivan and Cromwell, 418 F. Supp. 1 (S.D. N.Y. 1975).

12 U.S.—Smith v. Danyo, 441 F. Supp. 171 (M.D. Pa. 1977), judgment *aff'd*, 585 F.2d 83, 26 Fed. R. Serv. 2d 620 (3d Cir. 1978).

Ariz.—In re Guardianship of Styer, 24 Ariz. App. 148, 536 P.2d 717 (Div. 2 1975).

13 U.S.—Brown v. Buchkoe, 244 F.2d 865 (6th Cir. 1957).

Ariz.—In re Guardianship of Styer, 24 Ariz. App. 148, 536 P.2d 717 (Div. 2 1975).

Kan.—Horton v. Montgomery Ward, 199 Kan. 245, 428 P.2d 774 (1967).

14 U.S.—U.S. v. Johnson, 610 F.3d 1138 (9th Cir. 2010).

15 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

16 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

17 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

- 18 Cal.—*Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 440 (1st Dist. 1995) (disapproved of on other grounds by, *People v. Freeman*, 47 Cal. 4th 993, 103 Cal. Rptr. 3d 723, 222 P.3d 177 (2010)).
- 19 Cal.—*Catchpole v. Brannon*, 36 Cal. App. 4th 237, 42 Cal. Rptr. 2d 440 (1st Dist. 1995) (disapproved of on other grounds by, *People v. Freeman*, 47 Cal. 4th 993, 103 Cal. Rptr. 3d 723, 222 P.3d 177 (2010)).
- 20 Cal.—*In re Henry C.*, 161 Cal. App. 3d 646, 207 Cal. Rptr. 751 (5th Dist. 1984).

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